



**STATE OF NEW JERSEY**

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of Benjamin Niewinski,  
Police Lieutenant (PM1229T),  
Hillside

Administrative Appeal

CSC Docket No. 2018-3688

**ISSUED: JUNE 14, 2019** (HS)

Benjamin Niewinski requests a retroactive date of permanent appointment to the title of Police Lieutenant, effective January 16, 2017.

By way of background, Niewinski received a permanent appointment to the title of Police Sergeant, effective August 1, 2005. Subsequently, he appeared on the eligible list for Police Lieutenant (PM1229T), Hillside, which promulgated on April 7, 2016 and expired on April 6, 2019. Niewinski ranked fourth on the eligible list of eight non-veteran eligibles. Agency records indicate Niewinski's receipt of a provisional appointment to the title of Police Lieutenant on January 16, 2017.<sup>1</sup> On November 14, 2017, the eligible list was certified with the names of all eight eligibles. Niewinski was listed on the certification in position four. The appointing authority returned the certification permanently appointing, effective November 14, 2017, the following individuals: Qiana Brown, the second listed eligible; Joseph Cocuzza, the third listed eligible; Niewinski; and Matthew Cove, the sixth listed eligible.<sup>2</sup>

On appeal to the Civil Service Commission (Commission), Niewinski requests a retroactive date of permanent appointment to the title of Police Lieutenant, effective January 16, 2017, in light of his performance of the duties of the title since

<sup>1</sup> Agency records indicate that the provisional appointment was inserted into the County and Municipal Personnel System (CAMPS) on May 25, 2018.

<sup>2</sup> Agency records indicate Cocuzza and Cove's receipt of provisional appointments to the title of Police Lieutenant on October 21, 2016 and January 24, 2017, respectively. These appointments were also inserted into CAMPS on May 25, 2018.

that date. He also requests that should this relief be granted, his seniority rating and score on the Police Captain (PM1803W), Hillside examination be adjusted accordingly.<sup>3</sup>

Although provided the opportunity to do so, the appointing authority did not submit any information.

## CONCLUSION

*N.J.A.C.* 4A:4-1.10(c) provides that when a regular appointment has been made, the Commission may order a retroactive appointment date due to administrative error, administrative delay or other good cause, on notice to affected parties. Generally, this unique remedy has been reserved for two particular situations. First, the Commission has granted retroactive permanent appointment dates in circumstances in which an employee was actually serving in and performing the duties of a title, but due to some error or other good cause, his or her attainment of permanent status was delayed or hindered. The second situation in which an employee may be awarded a retroactive date of permanent appointment is where the name of an employee, whose appointment would have otherwise been mandated, was improperly removed from or bypassed on an eligible list, thereby preventing their appointment. When the Commission subsequently corrects the improper list removal or bypass, the Commission also orders the employee's appointment and a retroactive permanent appointment commensurate with the date on which others were appointed from the certification of the eligible list. *See In the Matter of Neil Layden* (MSB, decided March 23, 2005); *In the Matter of Ciri Castro, Jon Martin, and Luis Sanchez* (MSB, decided January 12, 2005).

Upon review, several factors counsel against providing the requested remedy. Niewinski was the fourth ranked eligible on the Police Lieutenant (PM1229T) eligible list. While he was appointed from the November 14, 2017 certification, the Commission cannot assume that he would have been reachable for appointment as of January 16, 2017. *See N.J.A.C.* 4A:4-4.8(a)3. Further, Niewinski was not the only eligible appointed from the November 14, 2017 certification. Three others were appointed, and all received the same effective date of appointment. Providing Niewinski with an earlier date of appointment would be inequitable to the other individuals. Finally, the appointing authority has not indicated its support for the instant request. As such, the Commission declines Niewinski's request for lack of

---

<sup>3</sup> It is noted that Brown filed an appeal requesting a retroactive date of appointment to the title of Police Lieutenant, effective October 23, 2016, on the basis that she had been assigned as an "acting Lieutenant" beginning on that date. Brown had argued that this relief would allow her to be eligible for the PM1803W examination. Brown's appeal was closed on the basis that for promotional examinations, experience is considered only if it is gained in a recognized type of appointment, and Civil Service rules do not provide for "acting" appointments. Experience acquired in an "acting" capacity is typically not recognizable.

good cause. Since the request is denied, Niewinski's score on the Police Captain (PM1803W), Hillside examination requires no adjustment.

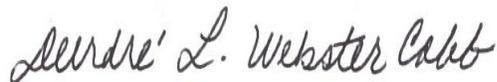
A final issue warrants comment. Agency records indicate Cocuzza, Niewinski and Cove's receipt of provisional appointments to the title of Police Lieutenant on October 21, 2016, January 16, 2017 and January 24, 2017, respectively. On those dates, there was a complete eligible list for the title (PM1229T) in existence. However, *N.J.A.C. 4A:4-1.5(a)1* provides that one condition of a provisional appointment is that there is no complete list of eligibles. As such, these employees could not have received the provisional appointments under the controlling regulation. Thus, it is appropriate to remove the provisional appointments from their personnel records. *See N.J.A.C. 4A:4-1.10(a)*.

### ORDER

Therefore, it is ordered that this request be denied. Additionally, the Division of Agency Services is ordered to correct the personnel records of Benjamin Niewinski, Joseph Cocuzza and Matthew Cove, consistent with this decision.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 12<sup>TH</sup> DAY OF JUNE, 2019



Deirdré L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Christopher S. Myers  
Director  
Division of Appeals and Regulatory Affairs  
Written Record Appeals Unit  
Civil Service Commission  
P.O. Box 312  
Trenton, New Jersey 08625-0312

- c. Benjamin Niewinski  
Joseph Cocuzza  
Matthew Cove  
Dahlia O. Vertreese  
Rhea Moore, Esq.  
Kelly Glenn  
Records Center